

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RUTH M.,

Plaintiff,

v.

Civil Action No.
5:24-CV-164 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

THE LAW OFFICES OF
STEVEN R. DOSLON PLLC
6320 East Fly Road, Suite 201
East Syracuse, NY 13057

STEVEN R. DOLSON, ESQ.

FOR DEFENDANT

SOCIAL SECURITY ADMIN.
6401 Security Boulevard
Baltimore, MD 21235

VERNON NORWOOD, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the

Commissioner of Social Security (“Commissioner”), pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.¹ Oral argument was conducted in connection with those motions on December 18, 2024, during a telephone conference held on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner’s determination did not result from the application of proper legal principles and is not supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court’s oral bench decision, a transcript of which is attached and incorporated herein by reference, it is hereby

ORDERED, as follows:


- 1) Plaintiff’s motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner’s determination that plaintiff was not

¹ This action is timely, and the Commissioner does not argue otherwise. It has been treated in accordance with the procedures set forth in the Supplemental Social Security Rules and General Order No. 18. Under those provisions, the court considers the action procedurally as if cross-motions for judgment on the pleadings have been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is VACATED.

3) The matter is hereby REMANDED to the Commissioner, without a directed finding of disability, for further proceedings consistent with this determination.

4) The clerk is respectfully directed to enter judgment, based upon this determination, remanding the matter to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) and closing this case.



David E. Peebles
U.S. Magistrate Judge

Dated: January 14, 2025
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
RUTH M.

Plaintiff,

vs.

5:24-CV-164

Commissioner of Social Security,

Defendant.
-----x

DECISION

December 18, 2024

the HONORABLE DAVID E. PEEBLES,

United States Magistrate Judge, Presiding

APPEARANCES (by telephone)

For Plaintiff: LAW OFFICES OF STEVEN R. DOLSON PLLC
6320 Fly Road
East Syracuse, New York 13057
BY: STEVEN R. DOLSON, ESQ.

For Defendant: SOCIAL SECURITY ADMINISTRATION
6401 Security Boulevard
Baltimore, MD 21235
BY: VERNON NORWOOD, ESQ.

*Eileen McDonough, RPR, CRR
Official United States Court Reporter
P.O. Box 7367
Syracuse, New York 13261
(315) 234-8546*

1 THE COURT: Let me begin by thanking both of you
2 for excellent presentations. This presented an interesting
3 case in a matter that unfortunately has been languishing for
4 almost ten years before the Agency.

5 Before I address the merits of the case, I wanted
6 to broach the subject of consent. Attorney Dolson, when this
7 case was filed it was assigned to one of my colleague
8 Magistrate Judges Therese Wiley Dancks. The consent form
9 that was filed at docket 7 consents to Magistrate Judge
10 Dancks deciding the case with direct review to the Second
11 Circuit Court of Appeals. The matter obviously has since
12 been transferred to me. Does the plaintiff consent to my
13 deciding the case?

14 MR. DOLSON: Yes, Judge, the plaintiff fully
15 consents.

16 THE COURT: Thank you.

17 Plaintiff has commenced this proceeding pursuant to
18 42, United States Code, Sections 405(g) and 1383(c)(3) to
19 challenge an adverse determination by the Commissioner of
20 Social Security. The background as relevant to the issues
21 raised is as follows.

22 Plaintiff was born in December of 1981. She turns
23 43 years of age this month. She lives with her husband and
24 children and mother in Pennellville, New York. She has a
25 high school degree and an Associate's college degree. She is

1 right-handed. She last worked in 2015 but has since been
2 paid for working approximately ten hours per week caring for
3 her mother. She has described her duties in that regard as
4 basically babysitting, monitoring safety and so forth.

5 Physically, plaintiff suffers from a variety of
6 medically determinable impairments, including, as relevant
7 again to this case, bilateral arm, hand and finger issues,
8 including a history of cubital tunnel syndrome and carpal
9 tunnel syndrome.

10 In that regard she has undergone surgeries,
11 including on August 25, 2015, wherein she underwent a left
12 endoscopic carpal tunnel release; January 4, 2016, a left
13 open carpal tunnel release; July 13, 2016, open carpal tunnel
14 release and a decompression of proximal median nerve of
15 forearm; on November 14, 2019, a right ulnar nerve
16 decompression at elbow with anterior transposition, right
17 medial elbow flexor muscle lengthening, right index finger
18 trigger release, and left middle trigger finger cortisone
19 injection flexor tendon sheath; on March 15, 2021, the right
20 thumb, middle, ring and small fingers flexor tendons sheath
21 A1 pulley trigger release; on September 22, 2022, left thumb
22 trigger release, left middle finger trigger release, left
23 middle finger mucous cyst excision flexor tendon sheath, left
24 ulnar nerve revision decompression with anterior
25 transposition of ulnar nerve, left elbow medial flexor muscle

1 lengthening.

2 In addition, she has undergone testing, including
3 on February 17, 2017, EMG and nerve conduction studies. That
4 appears at 688 through 692 of the Administrative Transcript.
5 The impression being abnormal study. And I won't read the
6 entirety of the transcript, but the conclusion is moderate to
7 severe left carpal tunnel syndrome and moderate left ulnar
8 neuropathy at the elbow.

9 There was also nerve conduction study and EMG done
10 on May 10, 2018. Assessment, left shoulder calcific
11 tendonitis; right lateral epicondylitis; chronic ulnar
12 neuropathy at the elbow, right worse than left; chronic
13 median neuropathy, left worse than right; C7 neuropathy.

14 There was testing done on June 3, 2022, EMG and
15 nerve conduction, abnormal study. Electrodiagnostic studies
16 of the bilateral upper extremities reveal evidence of
17 bilateral demyelinating median mono-neuropathies at the
18 wrists, affecting both sensory and motor fibers. These
19 findings are consistent with moderate bilateral carpal tunnel
20 syndrome. Of note, there is reinnervation in the left
21 abductor pollicis brevis, which is secondary to chronic
22 median motor axonal loss due to previous severe left carpal
23 tunnel syndrome. The conclusions are bilateral carpal tunnel
24 syndrome, likely moderate bilaterally; moderate bilateral
25 ulnar neuropathies at the elbows; chronic right C6

1 radiculopathy; left median sensory and motor nerve conduction
2 responses are slightly improved compared to previous
3 postsurgical EMG testing in 2017. That's 3344 to 3345.

4 I note that plaintiff also suffers from variously
5 diagnosed mental conditions, including anxiety and
6 depression, which are not relevant to this case today.

7 Plaintiff is a past smoker. She testified to
8 smoking two to three cigarettes per day, and she quit, the
9 evidence is a little equivocal, but approximately 2020.

10 This case, as was mentioned during oral argument,
11 has a tortured procedural history. It dates back to Title II
12 and Title XVI applications filed on May 4, 2015, alleging an
13 onset date of September 1, 2005, which was later adjusted to
14 plaintiff's date of last insured status of March 31, 2015. A
15 hearing was conducted by Administrative Law Judge Gretchen
16 Mary Greisler on June 22, 2017. The ALJ ultimately issued an
17 unfavorable decision on August 2, 2017. The Social Security
18 Administration Appeals Council denied review on July 27,
19 2018. A suit was commenced in this court on August 22, 2018.
20 In the intervening time between the commencement of that suit
21 and its disposition, plaintiff filed a subsequent Title XVI
22 application on August 27, 2018, alleging an onset date of
23 August 3, 2017.

24 On February 18, 2020, Magistrate Judge Christian F.
25 Hummel issued a Report and Recommendation recommending that

1 the matter be remanded for further proceedings. That was
2 adopted by District Judge Frederick J. Scullin on March 16,
3 2020. A hearing was conducted on February 12, 2020 by
4 Administrative Law Judge Greisler, who issued again an
5 unfavorable decision on April 10, 2020. The Appeals Council,
6 however, vacated that determination on June 25, 2020, and it
7 also vacated the August 2, 2017 decision, as well as the
8 April 10, 2020 decision, and ordered consolidation of the two
9 matters. A hearing was conducted on August 25, 2020 by
10 Administrative Law Judge Elizabeth Koennecke, who then issued
11 an unfavorable decision on October 21, 2020.

12 The matter was again remanded by the Appeals
13 Council on September 28, 2022. Among the findings the
14 Appeals Council made was that the hearing decision did not
15 comply with the remand order directing consolidation of the
16 claims. The Appeals Council also criticized the
17 Administrative Law Judge's evaluation of opinion evidence
18 concerning plaintiff's mental condition and concerning
19 plaintiff's asthma.

20 On April 10, 2023, Administrative Law Judge
21 Koennecke held another hearing and subsequently issued an
22 unfavorable decision on April 14, 2023. The Appeals Council
23 denied plaintiff's application for review on December 13,
24 2023, making it a final determination of the Agency. This
25 suit was commenced on February 2, 2024, and is timely.

1 In her decision Administrative Law Judge Koennecke
2 applied the familiar five-step sequential test for
3 determining disability, first noting that plaintiff was
4 insured through March 31, 2015 for purposes of Title II
5 benefits.

6 She found at step one that plaintiff had not
7 engaged in substantial gainful activity, although she did
8 note plaintiff's part-time work caring for her mother. She
9 said that although it did not constitute substantial gainful
10 activity, it would be considered when making her
11 determination.

12 At step two, the Administrative Law Judge concluded
13 that plaintiff suffers from many physical and mental
14 impairments that are severe and cause more than minimal
15 limitations on her ability to perform basic work activities,
16 and proceeded to step three where she concluded that
17 plaintiff's conditions do not meet or medically equal any of
18 the listed presumptively disabling conditions set forth in
19 the Commissioner's regulations.

20 The Administrative Law Judge then based on a review
21 of the record determined that plaintiff retains the residual
22 functional capacity, or RFC, to perform sedentary work with
23 additional limitations. Pertinent to this case is the
24 limitation that plaintiff can frequently reach in all other
25 directions except overhead and frequently handle, finger and

1 feel.

2 Applying that and after reviewing the medical
3 evidence of record, the ALJ concluded that plaintiff is not
4 capable of performing her past relevant work, but found at
5 step five, with the assistance of testimony from a vocational
6 expert, that there is work available in the national economy
7 that plaintiff was capable of performing, notwithstanding
8 her limitations, including as representative examples
9 electronic component inspector, medical device assembler, and
10 shipping checker, and therefore concluded that plaintiff was
11 not disabled at the relevant times.

12 The Court's function in this case is admittedly
13 deferential and limited. I must determine whether correct,
14 legal principles were applied and the resulting determination
15 is supported by substantial evidence. The Court, the Second
16 Circuit Court of Appeals, has fleshed out and reminded us of
17 that standard in *Brault versus Social Security Administration*
18 *Commissioner*, 683 F.3d 443, Second Circuit 2012, and later
19 again in *Schillo v. Kijakazi*, 31 F.4th 64, Second Circuit
20 2022.

21 Plaintiff's contentions in this case are limited to
22 claiming that the residual functional capacity finding lacks
23 support and it is not based on medical evidence, but instead
24 the Administrative Law Judge's lay review of raw medical
25 data. Pivotal, of course, to any disability determination is

1 the assessment of a claimant's RFC which represents the range
2 of tasks he or she is capable of performing notwithstanding
3 his or her impairments. 20 C.F.R. Sections 404.1545(a) and
4 416.945(a). *Tankisi v. Commissioner of Social Security*, 521
5 F.App'x 29, Second Circuit 2013.

6 Ordinarily an RFC represents a claimant's maximum
7 ability to perform sustained work activities in an ordinary
8 setting on a regular and continuing basis, meaning eight
9 hours a day for five days a week or an equivalent schedule.
10 *Tankisi*, 521 F.App'x, at 33. And, of course, an RFC
11 determination is informed by consideration of a claimant's
12 physical and mental abilities, symptomatology, and other
13 limitations that could interfere with work activities on a
14 regular and continuing basis, as well as all of the relevant
15 medical and other evidence.

16 In this case, as I indicated, the RFC speaks to
17 dexterity and requires that the plaintiff can frequently
18 handle, finger and feel. There are four medical opinions in
19 the record that speak to that issue. The first is from
20 Dr. Kalyani Ganesh from June 4, 2015. It appears at 474 to
21 477 of the Administrative Transcript. In that medical
22 opinion she makes the following finding: "There is no gross
23 physical limitations to sitting, standing, walking, or the
24 use of upper extremities. There is mild limitation with
25 overhead activity."

1 The Administrative Law Judge in her decision
2 appears to give some weight to that opinion. She allocates
3 partial evidentiary weight to it finding it is generally
4 consistent with the evidence in the record, including
5 evidence from the subsequent application in Dr. Ganesh's
6 evaluations of both June 2015 and December 2018. Her
7 analysis is at 1114 to 1115 of the Administrative Transcript.

8 The second is a subsequent consultative examination
9 before Dr. Ganesh dated December 27, 2018. In that it
10 appears as follows, at 2971, the opinion is at 2968, by the
11 way, to 2971, "fine motor activity of hands: Hand and finger
12 dexterity, unable to comment. Her effort and cooperation
13 varied for her. The observation showed no atrophy of her
14 hand muscles. No deformities. Grip, unable to comment."
15 The medical source statement is as follows: "Effort and
16 cooperation poor. Unable to form medical source statement."

17 The third is a prior medical, administrative
18 medical finding from Dr. R. Uppal from January 17, 2019. It
19 appears at 1404 to 1418 of the Administrative Transcript.
20 And there is a subsequent prior administrative medical
21 finding from Dr. R. Abueg from May 16, 2019, at 1420 to 1437.
22 Those prior administrative findings conclude that plaintiff
23 does not suffer from any manipulative limitations. That
24 appears at 1412 to 1430. Administrative Law Judge Koennecke
25 gave those prior administrative medical findings partial

1 weight, but concluded that plaintiff was more limited than
2 what was observed in those opinions. That's at 1117.

3 When I look at the record as a whole, I find that
4 it was error to place any weight on the opinion of Dr. Ganesh
5 from June 4, 2015. This Court has previously declared
6 through Judge Hummel and affirmed by Judge Scullin that that
7 opinion is stale as reflected in subsequent testing. The
8 opinion of Magistrate Judge Hummel appears at 1238 to 1243 of
9 the record. Magistrate Judge Hummel noted that plaintiff's
10 condition did not improve after Dr. Ganesh's evaluation.

11 The December 2018 opinion from Dr. Ganesh is not
12 particularly informative, so the reliance, heavy reliance
13 really is placed on the prior administrative findings. It is
14 true that prior administrative agency findings can supply
15 substantial evidence if they are supported. *Woytowicz v.*
16 *Commissioner of Social Security*, 2016 WL 6427787, from
17 Northern District of New York, October 5, 2016. The Report
18 and Recommendation was adopted at 2016 WL 6426385,
19 October 28, 2016.

20 However, in this case I find that they suffer from
21 the same infirmity that Dr. Ganesh's 2015 opinion did. It is
22 unclear what medical evidence was relied on, but what is
23 clear is those opinions predate the surgeries of November 14,
24 2019, March 15, 2021, and September 22, 2022, as well as the
25 EMG and nerve conduction study of June 8, 2022, which was

1 according to the report abnormal.

2 I find it interesting but insufficient that the
3 Administrative Law Judge appears to have not adopted greater
4 manipulative limitations because of the fact that at one time
5 plaintiff smoked, although she did reference also some
6 improvement and she did go through medical records in her
7 defense, 1115 to 1116, 1122 to 1124.

8 I have reviewed plaintiff's medical records from
9 the relevant period. They're mixed, admittedly. But as
10 Judge Hummel noted, this is not the type of case like *House*
11 *v. Astrue*, 2013 WL 422058 from the Northern District of New
12 York, February 1, 2013, where an administrative law judge can
13 based on his or her lay opinion and a review of medical
14 records make a common sense judgment without the benefit of
15 the medical opinion. And I agree with Judge Hummel on that
16 issue.

17 Simply stated, there is no valid, non-stale medical
18 opinion supporting the residual functional capacity when it
19 comes to manipulative functions. The RFC is, therefore, not
20 supported by substantial evidence I find. *Perkins v.*
21 *Berryhill*, 2014 WL 3372964 from the Western District of
22 New York, 2018; and *Lilley v. Berryhill*, 307 F.Supp.3d 157,
23 from the Western District of New York, April 19, 2018.

24 So I don't find that this is a case like the case
25 cited by the Commissioner, *Cook v. Commissioner of Social*

C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Federal Official
Realtime Court Reporter, in and for the United States
District Court for the Northern District of New York,
do hereby certify that pursuant to Section 753, Title 28,
United States Code, that the foregoing is a true and correct
transcript of the stenographically reported proceedings held
in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the
Judicial Conference of the United States.

Eileen McDonough

EILEEN MCDONOUGH, RPR, CRR
Federal Official Court Reporter